

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 10, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTONIA TOMBARI, an individual, and

TROY BRUNER, an individual,

Plaintiffs,

v.

STATE OF WASHINGTON, by and

through the WASHINGTON STATE

DEPARTMENT OF CORRECTIONS, a

Washington State Agency; CATHI

HARRIS, an individual; JIM RILEY, an

individual; MEGAN SMITH, an

individual; RENEE SCHUITEMAN, an

individual; and KRISTOPHER SMITH,

and individual,

Defendants.

NO. 2:20-CV-00336-SAB

**ORDER DENYING JOINT
MOTION FOR
PROTECTIVE ORDER**

Before the Court is parties' Joint Motion for Protective Order, ECF No. 13. The parties seek a protective order to protect certain confidential information. The motion was heard without oral argument.

The product of pretrial discovery is presumptively public, though Federal Rule of Civil Procedure Rule 26(c) permits a district court to override this presumption upon a showing of "good cause." *San Jose Mercury News, Inc. v. U.S.*

ORDER DENYING JOINT MOTION FOR PROTECTIVE ORDER * 1

1 *District Court—Northern Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999).
2 Rule 26(c) provides that a “court may, for good cause, issue an order to protect a
3 party or person from annoyance, embarrassment, oppression, or undue burden or
4 expense.” Prior to the grant of a protective order, the moving party must certify it
5 has “conferred or attempted to confer with other affected parties in an effort to
6 resolve the dispute *without court action*.” Fed. R. Civ. P. 26(c) (emphasis added).

7 Where the parties agree, as here, that certain information should remain
8 confidential, it may be prudent to enter into an agreement setting forth in writing
9 what information shall remain private. It is unnecessary, however, for such an
10 agreement to have this Court’s imprimatur. A court issued protective order is less
11 necessary since Rule 5(d) was amended to only require filing discovery material
12 actually used in support of an action. Because not all discovery material need be
13 filed, most discovery material is not readily accessible to the public. Therefore, the
14 primary concern regarding confidential materials is how the parties themselves
15 handle such material. This Court will not hesitate to issue a protective order when
16 it is necessary; however, the moving party or parties must demonstrate good cause
17 exists and must bear the “burden of showing specific prejudice or harm” that will
18 result if no protective order is granted. *Phillips v. G.M. Corp.*, 307 F.3d 1206,
19 1210–11 (9th Cir. 2002). In other words, the moving party must demonstrate why
20 the parties cannot resolve the issue without court action—a standard that will
21 generally not be met when the parties agree to the terms of a proposed protective
22 order.

23 The motion at hand fails to demonstrate specific harm or prejudice that will
24 result if no protective order is granted. Additionally, the parties appear to be in
25 agreement on what material is appropriate for discovery and how it should be
26 handled. Accordingly, the Court denies the stipulated motion for protective order.

27 The proposed protective order also contained instructions for filing certain
28 materials under seal. A higher standard applies to sealing orders as they relate to

1 discovery materials in support of dispositive motions. In order for a court to seal
2 records associated with a dispositive motion, it must base its decision on a
3 compelling reason tied to an articulated factual basis without relying on conjecture.
4 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). The
5 compelling basis standard is more stringent than the Rule 26(c) good cause
6 standard. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 679 (9th Cir. 2009).
7 Because the parties have failed to demonstrate that even good cause exists to
8 support this motion, they have also failed to provide a compelling basis for sealing
9 any records that may be filed in support of any dispositive motions.

10 The Court encourages the parties to continue cooperating with respect to the
11 handling of potentially sensitive discovery material. The parties may, upon proper
12 showing tied to specific discovery material, move the Court to seal certain
13 discovery filings.

14 Accordingly, **IT IS HEREBY ORDERED:**

15 1. The parties' Joint Motion for Protective Order, ECF No. 13, is
16 **DENIED.**

17 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
18 file this Order and provide copies to counsel.

19 **DATED** this 10th day of June 2021.



23
24

A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive, flowing style.

25 Stanley A. Bastian
26 Chief United States District Judge
27
28